

FREEDOM OF INFORMATION ACT
APPEAL

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August 12, 2015

Office of the Judge Advocate General (Code 14)
1322 Patterson Avenue, S.E., Suite 3000
Washington Navy Yard D.C. 20374

Reference:

(1) FOIA Request dated June 26, 2015: Sikes to Naval Criminal Investigative Service (NCIS/Quantico) requesting information from records related to ADM Boorda (copy attached) (2 pp)

(2) Initial Determination letter dated July 22, 2015: NCIS/Quantico (LT (b) (6)) to Sikes. (copy attached as three pdf files for the letter and its enclosures) (6 pp, incl enclosures)

Dear Sir/Madam:

The subject June 26, 2015 FOIA Request began as follows:

When NCIS performed an investigation into the suicide of Admiral J. M. Boorda in 1996, it seized and inventoried several items from the back seat of Admiral Boorda's official vehicle on 16 May 1996 ("the back seat contents"). The NCIS Report of Investigation located at [https://foia.navy.mil/foia/webdoc01.nsf/181A2C969DDE971786257D5E005E667D/\\$File/ADM%20Jeremy%20Michael%20Boorda.pdf](https://foia.navy.mil/foia/webdoc01.nsf/181A2C969DDE971786257D5E005E667D/$File/ADM%20Jeremy%20Michael%20Boorda.pdf) states:

On 16May96, an inventory of V/BOORDA's official vehicle, a 1995 Lincoln Towncar, color blue, Washington, DC, registration [redacted] was conducted by PA [redacted] NCISRA Annapolis, MD. The vehicle was parked in the circular driveway directly in front of V/BOORDA's residence facing in the direction towards the gate. Several memorandum notes, business cards, laminated cards containing telephone numbers and a six page handwritten document which appear to be notes relating to official business were located in the back seat area. The above items were seized and entered into the NCISFO evidence custody locker under NCIS log #148-96. A results of the vehicle inventory is exhibit (36). (emphasis supplied)

With the foregoing as context, **this June 26, 2015 FOIA Request was subdivided into five Parts**, and the Initial Determination Letter from NCIS responded in corresponding passages.

Part 1 of the Request asked for: "Any and all records documenting the transmission or release of either the above-mentioned back seat contents, or copies thereof, to any parties outside NCIS, regardless of who those parties might be. The term 'back seat contents' as used herein means the material underlined above, or any portion thereof."

The NCIS Initial Response regarding Part 1: "Standard procedure in documenting a transmission of evidence would be reported via an Evidence Custody Document. Contact with our Washington Field Office Evidence Custodian confirmed that this Service does not maintain any responsive documentation other than what appears in the previously released Report of Investigation."

The Appeal related to Part 1: In the NCIS Response the first sentence is unclear as written. Maybe there was a word omitted. Please re-phrase.

More importantly, **please provide copies of the material requested.** Notice that the request was for "... **all records documenting the transfer or release of either the ... back seat contents or copies thereof.**"

See original wording; no effort is being made here to revise or supersede the original wording of this request. Even so, it would appear that such records would include *dates* of transfers and releases, and would identify *which* "*portions* thereof," if Exhibit 36 was subdivided, with only a portion of Exhibit 36 transferred or released.

This request is not limited to such records as might reflect "**standard procedure,**" and is not limited to "Evidence Custody Documents." Rather, the request is for "*all* records documenting ...". The request *does include*, but is not limited to, "records documenting..." that appear in a log.

Also, while it is not clear from the first sentence in the NCIS Response just what is the definition of "evidence," it should be clear from the phrasing of Part 1 of the Request that what is being requested is not limited to documentation that tracks the moves of what originally went into evidence locker 148-96; rather, it also includes any documentation that tracks *copies* thereof.

On page 75 (hand pagination) of the NCIS Report of the Boorda Suicide Investigation there is an indication that (23+1+1+1=) 26 copies of that Report were made. From the Report's page 64, and pages 168 through 178, and page 72, it is apparent that what was included within each copy of that Report was an unredacted copy of the Report's Exhibit 36.

Exhibit 36 encompasses all of what might be included in the term "back seat contents." However, as defined in this Request, "back seat contents" might only consist of a subset of Exhibit 36.

From the phrasing of Part 1 of this FOIA Request it is clear that if Exhibit 36 *or any portion thereof* has been copied, either from the originals in the evidence locker *or from some copy of the Report of Investigation*, with said copies transmitted or released TO ANYONE outside NCIS, and if *any* records have been made of such transfer or release (Evidence Custody Documents or any other records), those transfer records fall within the scope of what is requested here in Part 1.

The second sentence of the NCIS Response says "... this Service does not maintain any responsive documentation other than what appears in the previously released Report of Investigation." (I assume "this Service" means the NCIS response speaks for "the Navy;" if this is incorrect, please clarify.) **Papers and records documenting the "transmission or release" of the back seat contents (as defined above) are what is requested**, regardless of whether or not such documentation of transmission or release appears in the "Report of Investigation."

In denying the existence of "responsive documentation" while referring to "the previously released Report of Investigation," the NCIS initial determination letter construes Part 1 of the instant FOIA request too narrowly. Please re-read Part 1 of this request, above, and in light of what is requested (and this appeal), please look again at the Navy's files and respond accordingly.

Part 2 of the Request asked for: "Any and all records identifying the **names, and affiliations or addresses, of the respective parties to whom the transmissions or releases in Part 1 were furnished.**"

The NCIS Initial Response, regarding Part 2: "Please refer to our response to Part 1."

The Appeal related to Part 2: Likewise, please refer to our response to Part 1. In light thereof, **please identify the names of parties and dates of transfer or release, with parties' affiliations or addresses.** As explained under Part 1, above, the transmittals and releases for which documentation is sought involves not only transmittals and releases of Exhibit 36, which originally went into the custody locker, but also the transmissions and releases of *copies* of Exhibit 36 *or portions thereof*.

Regarding my June 26, 2015 FOIA requests in Reference (1), please consider this to be the entirety of my administrative appeal, in accordance with the statement of appeal rights set forth in Reference (2).

Please acknowledge receipt of this appeal. Please reply directly to me as it pertains to this particular FOIA request. For that acknowledgement and for the ultimate reply, please respond by email, regardless of whether you also reply by USPS. USPS transmittals are always slower and, as I have been vividly reminded lately, sometimes unreliable to the point of being lost entirely.

Thank you for your assistance.

Sincerely yours,

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